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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In the Matter of one infant child
4 ABDOLLAH NAGHASH SOURATGAR,

5 Petitioner,

6 v.

7 12 Civ. 7797 PKC

8 LEE JEN FAIR,

9 Respondent.

10 December 14, 2012
11
12 Before:
13 HON. P. KEVIN CASTEL,
14 District Judge
15
16 APPEARANCES
17 ROBERT D. ARENSTEIN,
18 SANDRA NUNEZ,
19 Attorneys for plaintiff
20 PATTON BOGGS LLP
21 BY: ANDREW J. McNALLY, Esq.
22 DORCHEN A. LEIDHOLDT, Esq.
23 Of counsel
24
25 Also Present:
26 JENNIFER BAUM,
27 JENNA DiCOSTANZO,
28 Guardians ad Litem
29 - and -
30 JANE KIM, Esq.

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1 (Trial resumes)

2 (In open court)

3 THE COURT: Please be seated. Good morning.

4 Respondent may call her next witness.

5 MS. LEIDHOLDT: Your Honor, we have no more witnesses
6 to call. Our understanding is that Mr. Arenstein will
7 stipulate to the qualifications of the -- he has waived his
8 objection, pardon me -- to the qualifications of the translator
9 of the documents that were submitted by Mr. Souratgar's
10 attorney in the Malaysia Shairiah court, so we have finished
11 our case.

12 THE COURT: Let me get this straight now. I didn't
13 understand that the objection was to the qualifications. I
14 thought it was an objection to the absence of a translation
15 coming in in any way permitted by the rules.

16 Now, if there is a stipulation between the parties
17 that the translation which has been previously submitted as
18 R-37-1 and R-38-1 is a fair and accurate translation, then that
19 disposes of the issue. Is the respondent prepared to stipulate
20 to that?

21 MR. McNALLY: Yes, your Honor.

22 THE COURT: Is the petitioner prepared to stipulate?

23 MR. ARENSTEIN: Yes, your Honor.

24 THE COURT: So R-37 and R-38 may come in without
25 objection. Is that correct?

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1 MR. ARENSTEIN: Yes, your Honor.

2 THE COURT: They are received as a translation.

3 (Respondent's Exhibits R-37 and R-38 received in
4 evidence)

5 THE COURT: All right. Is there anything further in
6 the respondent's case?

7 MR. McNALLY: Yes, your Honor, two minor items.

8 Yesterday we were working with a document that I asked
9 your Honor take judicial notice of. You suggested that I mark
10 it appropriately. I have marked it as R-39. I can submit
11 another copy to the court that has said marking on it.

12 THE COURT: That is fine. Why don't you do that.
13 That is just for identification?

14 MR. McNALLY: Correct.

15 THE COURT: Thank you.

16 MR. McNALLY: Finally, your Honor, yesterday you had
17 received a parcel from Singapore with the mediation notes. You
18 entrusted it to me and asked I circulate copies of the same to
19 Ms. Baum and Mr. Arenstein.

20 THE COURT: Yes.

21 MR. McNALLY: I am happy to report I did that last
22 night, and I have the originals for your Honor.

23 MR. ARENSTEIN: I would like to thank Mr. McNally for
24 his fast and speedy copying it and getting it to us last night.

25 THE COURT: Thank you very much.

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1 MS. LEIDHOLDT: Yesterday, your Honor, you directed us
2 to obtain Dr. Cling's notes --

3 THE COURT: Yes.

4 MS. LEIDHOLDT: -- and make copy copies of them.

5 Ms. Kim was able to pick them up early this morning
6 and Ms. Kim is currently making copies of them, and we will
7 shortly have them to Mr. Arenstein.

8 THE COURT: Do you have any idea on the timing of
9 that?

10 MS. LEIDHOLDT: There is a terribly long line outside
11 and she is probably in that line, but I believe she has
12 completed the task and is on her way back up.

13 THE COURT: That is wonderful.

14 Is there anything further, Mr. McNally?

15 MR. MCNALLY: We rest, your Honor.

16 THE COURT: Okay. Any rebuttal case?

17 MR. ARENSTEIN: Your Honor, I have submitted to the
18 court Petitioner's Exhibit GG, which is a case in Singapore
19 talking about the civil contempt and contempt of court
20 regarding the penal code that was submitted by Mr. McNally, and
21 I ask the court to take judicial notice of Petitioner's Exhibit
22 GG which I have handed to both parties and handed to the court.

23 THE COURT: All right. I will take that under
24 advisement. Throughout the course of this proceeding there
25 have been various materials referenced by the parties or by the

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court as to which the parties have been placed on notice, and the court will take under advisement whether to take judicial notice of those materials, noting that there has not been objection to the taking of judicial notice.

MR. ARENSTEIN: This is a case in Singapore, an actual judicial case that was decided by the court.

Anyway, your Honor, the other thing is I would like to move at this point to strike the testimony, the irrelevant testimony of both Ms. Lee Jen Fair and of the psychologist Dr. Cling, pursuant to your Honor's direction to make the motion at this time.

THE COURT: All right. I will take that under advisement. Is there a rebuttal case by petitioner?

MR. ARENSTEIN: We ask that the court take the Judicial Harmony report that was submitted, and based on that report, if the court takes judicial notice of it, since it was submitted to the court and requested by the court, we will dispense with any rebuttal witness.

THE COURT: Well, do you want to have the materials marked as an exhibit in this case?

MR. ARENSTEIN: I would. I would like to make it Court's Exhibit 1 or 2, whatever number.

THE COURT: No. You can make it a petitioner's exhibit.

MR. ARENSTEIN: Then I make it Petitioner's Exhibit

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1 HH.

2 THE COURT: All right. You are offering it?

3 MR. ARENSTEIN: Yes, I am, your Honor.

4 THE COURT: Any objection?

5 You're offering it into evidence. Is that correct?

6 MR. ARENSTEIN: Yes, that is correct.

7 THE COURT: Any objection?

8 MR. McNALLY: No, your Honor, except I do have a
9 photocopy here if that would be easier.10 THE COURT: I will take the photocopy, that will be
11 great. I am marking the original as Petitioner's HH, but the
12 court would appreciate a photocopy if you have an extra. That
13 is received in evidence.

14 (Petitioner's Exhibit HH received in evidence)

15 MR. ARENSTEIN: I think he will put a sticker on it.

16 THE COURT: Okay. So perhaps I misunderstood you, Mr.
17 Arenstein. You're resting and you are not putting in the
18 undertaking, nor are you offering any evidence with regard to
19 the Turkish Airline circumstance. Is that correct?20 MR. ARENSTEIN: I believe the undertaking was already
21 submitted, your Honor.22 THE COURT: I believe you're mistaken. I don't ask
23 for the undertaking. I don't want the undertaking. I am not
24 an inquiring magistrate here. I am a judge in an adversary
25 system. You are free to offer what you wish to offer or not

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1 offer evidence. That is your prerogative, not mine.

2 You referred to some sort of a ruling from the court.
3 You're not offering that, either?

4 MR. ARENSTEIN: That was GG, your Honor. I handed it
5 to you.

6 THE COURT: GG is the ruling of the Singapore court in
7 this case with regard to the undertaking?

8 MR. ARENSTEIN: No, no, no. I have that here.

9 THE COURT: I am not asking for this, Mr. Arenstein,
10 but you've referred to it many times, and I gather your
11 intention was to rest this case without putting it in?

12 MR. ARENSTEIN: No. I intend to put it in right now
13 as Petitioner's Exhibit HH.

14 THE CLERK: You have HH already.

15 MR. ARENSTEIN: Then II.

16 THE COURT: I have HH, yes, right.

17 MR. ARENSTEIN: Petitioner's Exhibit II. Everybody
18 has a copy.

19 (Pause)

20 THE COURT: I am returning some phones that have been
21 given to my Deputy that have not been received into evidence.
22 I don't know what they are doing here on my Deputy's desk, but
23 I ask that they be taken away.

24 (Pause)

25 THE COURT: Again I think at one point I recall in the

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1 course of this hearing I was offered an opportunity to inspect
2 the phones. That is not what I do for a living. I am not an
3 inquiring magistrate here.

4 If somebody wants to offer evidence to me, they can
5 offer evidence. If somebody wants a physical object received
6 in evidence, we consider the physical object, but I don't just
7 inspect things that are not in evidence.

8 THE CLERK: Is that offered and received?

9 MS. NUNEZ: II.

10 THE COURT: Are you offering now --

11 MR. ARENSTEIN: That was not accepted into evidence.

12 THE COURT: What have you offered now? I don't
13 understand. Something marked as II, and what is it, sir?

14 MR. ARENSTEIN: II is the undertaking and filing and
15 acceptance of the court of the undertaking, your Honor, in
16 Singapore.

17 THE COURT: You're offering it into evidence?

18 MR. ARENSTEIN: Yes, I am.

19 THE COURT: Any objection?

20 MR. McNALLY: No objection to it coming in, your Honor
21 only insofar as it being characterization of being.

22 Accepted. It appears to have been filed, according to
23 my reading of the first two pages of the document. I don't
24 know if that constitutes an acceptance or endorsement of the
25 same.

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1 THE COURT: Mr. Arenstein has repeatedly represented
2 to me that this has been accepted, that he has received
3 information that this has been accepted by the court in
4 Singapore, the undertaking has been accepted.

5 Surely this document will reflect judicial approval of
6 the undertaking and not merely a filing. I have heard Mr.
7 Arenstein make this representation to me on a number of
8 occasions. Mr. Arenstein, this is a judicial approval. I
9 haven't read the exhibit. You are giving me a judicial
10 approval of the undertaking?

11 MR. ARENSTEIN: I don't know that a judge has signed
12 it, but it says, "Filed and accepted by the Court."

13 THE COURT: As you can apply for \$20 million in
14 attorney's fees in this case, I don't think there is any
15 restriction and the Clerk of Court will accept that for filing,
16 too, correct, in this Court?

17 MR. ARENSTEIN: I assume so, yes.

18 THE COURT: But you didn't make that representation
19 that it has been filed with the court in Singapore. You've
20 made the representation to this Court repeatedly in the course
21 of this proceeding that the undertaking was filed and accepted
22 by the court in Singapore.

23 Did the court in Singapore take any action with regard
24 to your client's undertaking?

25 MR. ARENSTEIN: My client's counsel informed me that

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1 this document was filed and accepted by the court and is now
2 part of the court's case, and his undertaking is something,
3 from what my counsel tells me in Singapore, which can be
4 enforced by the court.

5 THE COURT: You made a representation to this Court
6 repeatedly that your client -- in fact, you told me your client
7 had filed it. I think you told me your client had filed it,
8 and then you came back into court and you said, "Your Honor, I
9 have news," in words or substance, thank Goodness we have a
10 record here, but my recollection of it is that, "I wanted to
11 bring you up to date, the court in Singapore has accepted my
12 client's undertaking."

13 Are you now telling me that the court, the judge in
14 Singapore has taken no action with regard to your client's
15 undertaking?

16 MR. ARENSTEIN: I was informed by Ms. Gomez, who is
17 counsel for Mr. Souratgar, because I am not a lawyer in
18 Singapore, this is accepted and filed with the court and now
19 can be enforced by the judge.

20 I don't know whether the judge put a judicial
21 signature on it, but it is part of the court file and it is
22 part of a document which is enforceable, and Mr. Souratgar is
23 responsible to take action pursuant to that order.

24 THE COURT: Mr. Arenstein, this is a question that
25 goes to candor, your candor with the court. Do you have any

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1 indication that any judge of any court in Singapore has acted
2 upon your client's undertaking --

3 MR. ARENSTEIN: The only indication --

4 THE COURT: -- in the record in this proceeding?

5 MR. ARENSTEIN: In this proceeding, the only
6 indication I got was from Ms. Gomez, your Honor.

7 THE COURT: That is not part of the record in this
8 proceeding, is it?

9 MR. ARENSTEIN: No.

10 THE COURT: In the evidence in this proceeding?

11 MR. ARENSTEIN: No, other than the document I have and
12 the document that is on top of it because the first document
13 was the document that was taken to the consulate in Singapore
14 here.

15 THE COURT: And this reflects simply that there was a
16 filing. That's all it reflects?

17 MR. ARENSTEIN: I was told by Ms. Gomez that it was
18 accepted by the court as an enforceable document. Whether or
19 not the judge signed it or not, I don't see a signature.

20 THE COURT: There is no evidence before me of that,
21 correct?

22 MR. ARENSTEIN: That's correct.

23 THE COURT: I should go on the evidence before me,
24 correct?

25 MR. ARENSTEIN: That's correct, your Honor. That is

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1 all I have to give you. I have nothing more.

2 THE COURT: But I get back to what you have
3 represented to this Court, and you have waffled even now and
4 vacillated between the court accepted it for filing, meaning
5 that it is now part of the record in Singapore, and a
6 representation that there has been some form of judicial action
7 taken. You don't disclaim a representation that there's been
8 judicial action on it, right?

9 You still adhere to that?

10 MR. ARENSTEIN: I can get a clarification from
11 Ms. Gomez, but what I was told by Ms. Gomez and I mentioned to
12 this Court is that the court has filed and accepted this
13 document as a document which they can enforce. I don't know
14 whether a judge has put his signature on it or not.

15 THE COURT: We are not talking about signature.

16 Is it fair to say you have represented to me in this
17 courtroom that a judge in Singapore has acted on your client's
18 undertaking? Is that a Fair characterization of what you told
19 me?

20 MR. ARENSTEIN: I don't -- if I said that, then I
21 misspoke -- I don't know whether a judge, I don't know whether
22 a judge has acted on it because I'm not in Singapore. All I
23 know is that this is a document that is part of the court
24 record which I assumed the judge is aware of in Singapore.

25 THE COURT: What is the basis for your assumption?

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1 MR. ARENSTEIN: There is a filing and acceptance by
2 the court of this undertaking.

3 THE COURT: So you would assume I am aware of anything
4 that is docketed on ECF in this Court, is that a fair
5 equivalent?

6 MR. ARENSTEIN: It is not the same as ECF in
7 Singapore. I can't tell you how Singapore works, but I believe
8 what is filed in the Singapore court becomes part of the record
9 in Singapore and is acted on. If Mr. Souratgar were to not
10 follow that undertaking, I believe that a judge could find him
11 in contempt of that undertaking.

12 THE COURT: You don't understand. I am still back on
13 the candor issue. I am back on your candor with me. That is
14 what I am back on, Mr. Arenstein.

15 What I am trying to find out is could the court have
16 acted on it before it was filed?

17 MR. ARENSTEIN: The court act?

18 THE COURT: Could the court do anything or see it
19 before it was filed?

20 MR. ARENSTEIN: I don't see how a court can act until
21 it is filed, but she said the court accepted.

22 THE COURT: Now, do you have any evidence of anything
23 happening other than it being filed?

24 MR. ARENSTEIN: I have evidence that it was accepted
25 by the court. They can reject it. Clerks have rejected --

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1 THE COURT: Where?

2 MR. ARENSTEIN: I have had things filed on ECF that
3 have been rejected by ECF.

4 THE COURT: No. Mr. Arenstein, think with me for a
5 minute. I think what you're accepting is a judge can't
6 function on something until it is filed, right?

7 MR. ARENSTEIN: That's correct.

8 THE COURT: So if we were talking about this system,
9 the judge couldn't know about your motion until you filed it on
10 the ECF, correct?

11 MR. ARENSTEIN: That's correct.

12 THE COURT: We start from the assumption the judge in
13 Singapore could not act on this until it was filed, right?

14 MR. ARENSTEIN: I agree.

15 THE COURT: You agree with it. You have evidence it
16 was filed?

17 MR. ARENSTEIN: I have evidence it was filed and
18 accepted by the clerk.

19 THE COURT: That is the starting point where a judge
20 could either do something with it or not do something with it
21 the moment it is filed. You have evidence it is filed, right?

22 MR. ARENSTEIN: That is correct.

23 THE COURT: Now, where is your evidence that upon
24 filing, the first moment that the court could act on it, that
25 the court has acted on it, because that is what I understand

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1 you told me in the course of this hearing.

2 MR. ARENSTEIN: I can get you a clarification on the
3 word of "acceptance" in Singapore from Ms. Gomez because
4 Ms. Gomez is the one who represented to me it is accepted by
5 that court is the court acting upon it. I don't know how the
6 Singapore court works because I don't practice in that court.

7 THE COURT: You adhere to the representation that the
8 Singapore court, upon the filing, then acted upon it? Is that
9 what you continue to represent to this Court?

10 MR. ARENSTEIN: I am not representing that. I don't
11 know exactly. I am not a Singapore lawyer. I only can take
12 what I am told by a Singapore lawyer, who tells me that the
13 court accepted it and it is part of the court record now and is
14 enforceable by the court. I can get a clarification from a
15 Singapore lawyer, but I don't practice in the Singapore court.

16 THE COURT: This is the hearing. You're welcome to
17 offer into evidence whatever you want to offer into evidence.

18 MR. ARENSTEIN: Then I offer into evidence the
19 document marked GG which has -- II, I believe, which is the
20 acceptance and filing by the court and the actual undertaking.

21 THE COURT: Mr. Arenstein, it is already in evidence.

22 MR. ARENSTEIN: Then I have nothing further, your
23 Honor.

24 THE COURT: So I take it then you are not offering --
25 are you offering any rebuttal witnesses?

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1 MR. ARENSTEIN: No, your Honor.

2 THE COURT: So you are not offering any evidence to
3 rebut the testimony of the mother with regard to the Turkish
4 Airlines incident, correct?

5 MR. ARENSTEIN: We haven't received the letter from
6 the Turkish Airlines.

7 THE COURT: I didn't ask you whether you received the
8 letter.

9 MR. ARENSTEIN: I can put my client on the stand.

10 THE COURT: I don't care what you do. I am trying to
11 have a clarification.

12 MR. ARENSTEIN: Then I will put my client on the
13 stand.

14 THE COURT: I don't know what you mean by "but then I
15 will." I am asking you a question. I am not telling you what
16 to do, Mr. Arenstein. I want a clear record here.

17 MR. ARENSTEIN: Your Honor, I am going to put the
18 petitioner on the stand in rebuttal of the mother's testimony
19 on the Turkish Airlines, the limited purpose.

20 THE COURT: All right. You may take the stand.

21 Please be seated, sir. Mr. Souratgar, the court
22 reminds you you're still under oath.

23 THE WITNESS: Yes.

24 THE COURT: Please be seated.

25 ABDOLLAH NAGHASH SOURATGAR,

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1 recalled as a witness by the Petitioner,

2 having been previously duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 DIRECT EXAMINATION

5 BY MR. ARENSTEIN:

6 Q. Mr. Souratgar, would you tell the court where you were on
7 November 12th, 2012.

8 A. In the United States, in Kingston.

9 Q. Who were you with?

10 A. With my son.

11 Q. Where were you the entire day?

12 A. If I can recall, we went for shopping to buy some
13 groceries, something like that, and then we went to the
14 supermarket, and then if I remember, it was a hangover for the
15 mother to visit the son on the 12th, if I am not mistaken, and
16 we stay, we stay together because as far as I remember, I was
17 here. I can't recall exactly what we did on the 12th of
18 November, but I was in the United States, in Kingston.

19 Q. Did you go to sleep with your son?

20 A. Yes, of course.

21 Q. Where were you at 11:00 o'clock on November 12th, 2012,
22 11:00 pm at night?

23 A. At home.

24 Q. What did you do the next morning?

25 A. Again I remember, as far as I remember, I think I have

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1 to -- at 9:00 o'clock again, if I am not mistaken, is bring my
2 son for 14 Sharon Drive, the place, as far as I remember, that
3 was supposed to be in this way, I can't remember.

4 Q. You were in Kingston for the entire day and night and
5 morning. Is that correct?

6 A. Yes. I am living in Kingston. They call it North Front
7 Street.

8 Q. Were you ever at Kennedy Airport at 11:00 pm on November
9 12th, 2012?

10 A. No, no, I never been on that day in the airport.

11 Q. Did you have any boarding pass or anything to go on a
12 plane? Did you board a plane on that day?

13 A. No, I never have -- I have my ticket from the Emirates
14 Airlines, which is in my bag right now. I came from the
15 Emirate Airlines. I never have any flight booking more than 23
16 hours.

17 MR. ARENSTEIN: No further questions.

18 THE COURT: Mr. Souratgar, you testified in this
19 courtroom on November 1st. Do you recall it was during the
20 electrical power outage? Do you remember that?

21 THE WITNESS: Sorry?

22 THE COURT: Do you remember appearing in a courtroom
23 in this courthouse? Now that I think about it, it was not this
24 courtroom, but there was a courtroom in this courthouse on
25 November the 1st, 2012. Do you recall appearing and testifying

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Souratgar - direct

1 before me in this courthouse during the blackout resulting from
2 the hurricane?

3 THE WITNESS: Yes, sir.

4 THE COURT: That was November 1st. Do you remember
5 that date?

6 THE WITNESS: I think it should be November -- I can't
7 really remember.

8 THE COURT: From the time of that appearance to today,
9 have you at any time been to Kennedy Airport?

10 THE WITNESS: One time.

11 THE COURT: When was that?

12 THE WITNESS: When Ms. Gomez come, I go and pick them
13 up.

14 THE COURT: What date was that, approximately?

15 THE WITNESS: Ms. Gomez came on --

16 THE COURT: I can offer you a calendar of the month of
17 November.

18 THE WITNESS: Thank you very much.

19 I believe it was the 31st November or the 1st of
20 December -- sorry, sorry -- 29 November. I have a booking
21 hotel when they book in the hotel on 39th Street, No. 149,
22 which I went to the airport with Ms. Tammy, picked them up,
23 send them to a hotel.

24 THE COURT: Do you recall what airlines they came in
25 on?

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Souratgar - direct

1 THE WITNESS: Emirate Airlines.

2 THE COURT: At any time have you been to Kennedy
3 Airport since that time?

4 THE WITNESS: No.

5 THE COURT: Have you traveled, since your first
6 arrival in the United States which was shortly before the
7 hearing that I referenced on November 1, have you at any time
8 traveled outside the United States?

9 THE WITNESS: No, sir; no, sir.

10 THE COURT: Have you at any time traveled out of the
11 State of New York?

12 THE WITNESS: Only to go Kingston and here. There is
13 no other places.

14 THE COURT: Thank you. You may inquire.

15 MR. McNALLY: My counsel asked me if we can have a
16 brief recess. We have a calendar that suggests --

17 THE COURT: You can have a brief recess. We'll take a
18 five-minute recess.

19 MR. McNALLY: I think we might need a little bit
20 longer than that because she has to retrieve the calendar from
21 her office downtown that reflects when visitation occurred. We
22 don't believe there was a visitation session on November 12th.

23 THE COURT: If somebody wants to have something faxed
24 to my Chambers, they're welcome to have it faxed to my Chambers
25 and I'll have it brought down here.

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Souratgar - direct

1 MR. McNALLY: We'll make that arrangement, your Honor.

2 THE COURT: We're in recess.

3 (Recess)

4 THE COURT: Please be seated.

5 THE WITNESS: Thank you.

6 THE COURT: Any cross-examination?

7 MR. McNALLY: No, your Honor.

8 THE COURT: You may step down.

9 (Witness excused)

10 THE COURT: Anything further in the rebuttal case of
11 petitioner?

12 MR. ARENSTEIN: No, your Honor.

13 THE COURT: Petitioner rests?

14 MR. ARENSTEIN: Yes, we do.

15 THE COURT: That concludes the evidentiary phase of
16 this case. I will permit but not require anybody who wishes to
17 say anything further in this case may do so at this time.

18 What I will require is that counsel remain in the
19 courtroom, and I'm having my Deputy hand to you the Deputy's
20 notes of the exhibits that have been received into evidence.
21 What I am going to direct you to do is to meet and confer and
22 go through the exhibits and have a pile that begins with the
23 exhibits in exhibit order, whether it is 1 through 36 or A
24 through Z that you agree have been received into evidence, and
25 a separate pile of anything that has been marked for

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1 identification or otherwise marked in this case but not
2 received into evidence.

3 I will require you to meet and confer on that, and I
4 will take the Bench if there is any dispute, we will get the
5 transcript if need be and resolve it. I want to have the
6 exhibits that have been received in evidence assembled by the
7 parties.

8 Let me ask a question of the guardian ad litem, is
9 there any evidence that the guardian ad litem wishes to offer
10 of any sort?

11 MS. BAUM: No, your Honor. I've submitted a number of
12 reports and letters, and I would just ask that the court take
13 those into consideration.

14 THE COURT: Okay. Any objection to my taking the
15 submissions of the guardian ad litem into consideration, Mr.
16 Arenstein?

17 MR. ARENSTEIN: The only objection I would have is I
18 don't think she can determine whether there is a grave risk of
19 danger. In one of her letters she made a statement that if the
20 evidence shows, she might make a recommendation as to grave
21 risk. I think that is in your Honor's purview to determine
22 grave risk.

23 The only other thing that I would address the court on
24 is if your Honor is going --

25 THE COURT: Do you understand what I am asking?

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1 I am asking whether I can take her positions into
2 account, not whether I should agree with her positions. Do you
3 understand the difference? I am asking you, can I take account
4 of the positions of the guardian ad litem, not am I bound by
5 anything the guardian ad litem has said?

6 Do you understand?

7 MR. ARENSTEIN: I understand that. The only problem I
8 have with that, this is not a custody case, and usually a
9 guardian ad litem is used in a custody case to advocate a
10 position.

11 THE COURT: They are usually are. This is not a
12 custody case.

13 MR. ARENSTEIN: Right. I understand that.

14 I have a little trouble understanding, your Honor, why
15 the guardian ad litem would take a position in this case on the
16 legal evidence that has been permitted to your Honor.

17 THE COURT: We are only talking about that which has
18 already been submitted by the guardian ad litem. Do you have
19 an objection to the court considering the submissions that the
20 guardian ad litem has made to this Court?

21 (Off-the-record discussion)

22 MR. ARENSTEIN: We have no objection to the report
23 except if it is contained in the report that there could be a
24 XIII (b) or some sort of a violation, that the guardian's
25 opinion would not necessarily be correct in this case because

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1 you are the arbitrator, you are the decider of the fact.

2 THE COURT: In other words, if I understand you
3 correctly, you have no objection to the court considering what
4 the guardian ad litem has said, but you don't agree with
5 everything the guardian ad litem has said, correct?

6 MR. ARENSTEIN: That's correct.

7 THE COURT: All right.

8 MR. ARENSTEIN: If she takes a conclusion, if she
9 comes to a legal conclusion there is a grave risk of danger, I
10 don't think that that would be proper.

11 THE COURT: Okay. Thank you.

12 Does the respondent have any objection to my taking
13 into account the views of the guardian ad litem?

14 MS. LEIDHOLDT: No, your Honor.

15 THE COURT: All right. Is there anything the
16 petitioner wishes to say by way of a closing statement or do
17 you want to rely on what you've said and submitted heretofore?

18 MR. ARENSTEIN: I just say two things.

19 On the Article XX, I think the evidence -- Article
20 XIII and XIII (b), as your Honor is aware, it has to be under
21 clear and convincing evidence and it has to, on XX, shock the
22 conscience of the court. I don't believe the testimony here
23 has shocked the conscience of the court on Singapore, and on
24 XIII (b) I don't think the grave risk of danger met the
25 standard of clear and convincing evidence.

CCEJSOU1

I think we have made our prima facie case under all 3, 5, 11 and 12 of the Hague Convention where we have shown the habitual residence of the child was Singapore, there was wrongful retention and wrongful removal of the child pursuant to the court orders of Singapore which did not allow Ms. Lee to take the child out of Singapore, and under Abbott and Kroll, the two cases that are seminal in the Supreme Court on the nescient orders, they were violated.

Mr. Souratgar has a right of custody under the Hague Convention, and the fact is that I think we have met our prima facie burden by the preponderance of the evidence on the petition for the return. So I believe we have made our prima facie case and I believe Article XIII (b) and Article XX have not been proven on the standards of this Court, and I ask your Honor to grant our petition to return the child back to Singapore.

THE COURT: All right. Anything the respondents wish to say?

MS. LEIDHOLDT: Your Honor, so I understand, your Honor will not be setting a schedule for a post-trial brief, which we would welcome the opportunity to submit to this Court.

THE COURT: No. I understand that the parties legitimately desire expedition in this case, and the treaty so requires, and you've all been gracious enough to provide me with trial memoranda, so I am giving you the opportunity now if

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1 there is anything you wish to say by way of closing argument or
2 post evidentiary submission, this is your time to do it.

3 MS. LEIDHOLDT: Your Honor has been very generous in
4 giving us the opportunity to elaborate on our theory of the
5 case throughout the pendency of this case. So I would
6 respectfully submit that respondent has met the burden of
7 proving by clear and convincing evidence that the subject child
8 faces a grave risk of harm should he repatriated to Singapore.

9 Your Honor, that grave risk is that the petitioner
10 really from the registration of the parties' marriage in
11 January of 2008 until the time that the petitioner fled
12 Singapore, had exerted a pattern of increasing coercive
13 control, domination and abuse that included repeated acts of
14 physical abuse against the respondent, some of which are
15 documented through police reports and medical reports, others
16 are not.

17 During these incidents of physical abuse, the subject
18 child was exposed to his father's violence against the mother,
19 physical violence against the mother, that the petitioner
20 subjected our client to repeated acts of sexual abuse, that
21 some of which rose to the level of rape, that were degrading
22 and humiliating and extraordinarily debilitating to the
23 respondent, and many of these acts took place in front of the
24 subject child who shared a bedroom with the parties and slept
25 next, immediately next to his mother.

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1 The petitioner subjected our client to psychological
2 battery and directed vial and humiliating epithets to her on a
3 regular basis, to her on a regular basis, frequently shouting
4 at her and constantly criticizing her, criticizing her as a
5 wife and criticizing her parenting of the subject child, and
6 that this psychological battering took place in the presence of
7 the subject child.

8 I would also submit, your Honor, that the petitioner
9 exerted a scheme, carried out a scheme where he reduced the
10 respondent mother to a condition of dependence on him
11 economically, that this was deliberate and that he carried out
12 his scheme by securing the immigration documentation of the
13 mother and the subject child, keeping this documentation,
14 identity cards, birth certificates, passports in his office
15 safe, which was a powerful tool of control and domination over
16 the petitioner and the subject child.

17 Your Honor, part of petitioner's scheme was to
18 surreptitiously render our client a citizen of Iran by
19 obtaining without her knowledge a passport in her name and
20 obtaining a passport for the subject child which she did not
21 approve of.

22 Respondent observed the passport petitioner had
23 secured for the subject child. She knows that it exists. She
24 never saw the passport, the Iranian passport that the
25 petitioner obtained for her until the pendency of this case.

CCEJSOU1

1 She knows this passport exists now. It has her photograph on
2 it. Never did she consent to this passport being made, never
3 has she consented to being a citizen of Iran, never has she
4 subjected the subject child in this case to being a citizen of
5 Iran.

6 Your Honor, we respectfully submit as part of
7 petitioner's course of conduct, his scheme, he exerted control
8 over the respondent using the legal system, a legal system that
9 sadly in Singapore failed to protect her from the petitioner's
10 violence, that our client went to the police precinct in
11 Singapore reporting violence on six separate occasions. On
12 three of those occasions there were medical reports. At no
13 time did the police in Singapore take any action to protect the
14 respondent mother from petitioner's violence.

15 Your Honor, I respectfully submit that respondent is
16 remarkable in that she took diligently and took so many steps
17 to protect herself and the child from petitioner's violence
18 once she was able to leave petitioner's residence and actually
19 even before then she initiated a custody case prior to leaving,
20 shortly before leaving.

21 After she initiated that case, petitioner cross-filed
22 for custody, and when it appears that petitioner was not happy
23 with what was going on at that point in time in the Singapore
24 courts, he initiated his own separate custody case in the
25 courts of Malaysia, in the Shairiah court of Malaysia.

CCEJSOU1

1 Your Honor, we have, we have submitted documentation
2 that shows in the Shairiah court of Malaysia petitioner
3 submitted documentation in which he stated that our client is a
4 practicing Christian and was taking the subject child to
5 church.

6 Our expert witness, Ms. Hassan, has testified for a
7 Muslim to practice Christianity in Malaysia is a very severe
8 crime. It is the crime of apostasy. In this respect, your
9 Honor, Mr. Souratgar placed Ms. Lee in grave danger in Malaysia
10 in his effort to secure custody of the child.

11 All of this, your Honor, places the subject child at
12 grave risk of harm. There is evidence before this Court that
13 Mr. Souratgar told, informed two individuals of his scheme to
14 take the respondent to Iran with the subject child where he
15 would have control over her and he would continue his punishing
16 behavior of her.

17 He informed Ms. Lee of this scheme, and most
18 importantly, he informed her sister, Jen Pink Lee, of this
19 scheme. When he first informed Ms. Jen Pink Lee of his scheme
20 to take the child to Iran, telling her that Ms. Lee, the
21 respondent, is a bad mother and the child should not have a
22 mother like her and she was going to take the child to Iran,
23 Ms. Pink Lee immediately informed her sister, and that's when
24 our client left the petitioner.

25 Subsequently, the petitioner went to Ms. Pink Lee's

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1 office, I believe the day after the respondent left him and
2 detailed his scheme, that he was going to, that he had reported
3 it to the authorities of Malaysia, which prohibits their
4 citizens from holding dual citizenship, that our client had
5 Iranian citizenship, that this would result in her citizenship
6 being rescinded, that she would then no longer be a Malaysian
7 citizen, that it would put her permanent residence status in
8 Singapore into jeopardy, and she would have no other
9 opportunity to go to any other country other than Iran, they
10 would take the child to Iran, and once she was in Iran, he
11 would have her put in jail in Iran. He detailed this to Jen
12 Pink Lee, your Honor. Just one second, please.

13 (Pause)

14 Your Honor, we would submit that our witnesses, our
15 fact witnesses, Jen Fair Lee and Jen Pink Lee and Ms. Chew were
16 credible. Our client Ms. Lee's testimony I think you see was
17 detailed and responsive and factually specific and entirely
18 credible, and the testimony of her sister was similarly
19 credible.

20 In striking contrast, your Honor, we would
21 respectfully submit that Mr. Souratgar's testimony lacked any
22 measure of credibility. It was contradictory, internally
23 contradictory. While he claimed that our client has chased him
24 around with knives and choppers and repeatedly attempted
25 suicide and described her as a histrionic, crazed, homicidal

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1 lunatic, that that evidence is contradicted internally in his
2 testimony and it is contradicted by our client's testimony on
3 the stand. It is contradicted by Dr. Cling's psychological
4 evaluation of our client which is uncontroverted, your Honor.

5 Your Honor, our expert witness, Dr. Cling, provides
6 the framework for understanding Mr. Souratgar's course of
7 conduct. She has characterized him as someone who was
8 hell-bent on the domination and control and ultimately when she
9 left him, the destruction of our client.

10 Your Honor, it is very clear in this case that the
11 interests of the mother and the subject child cannot be
12 separated, that our client was the primary caretaker of the
13 subject child, she was an excellent and responsive mother under
14 conditions that would make it very difficult to be a good
15 mother.

16 Part of Mr. Souratgar's scheme is to deprive Shayan of
17 his mother, to remove her from his life, from the child's life.
18 That would be extraordinarily injurious to this child. Should
19 Shayan be repatriated to Singapore in the custody, care and
20 control of his father, he will be in the custody, care and
21 control of someone who attempted to destroy the child's mother.
22 That is a grave risk of harm.

23 The idea the Singapore courts are going to protect our
24 client, it is very clear that that is not the case. Ms. Hassan
25 testified that the Shairiah court is not bound by any rulings

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1 of the Family Court in Singapore, so assuming the Family Court
2 takes protective steps, the Shairiah court will not be bound by
3 that, and that the Shairiah court will have jurisdiction over
4 the custody case any time either party initiates a divorce. It
5 can be Mr. Souratgar or it can be Ms. Lee.

6 Obviously, it would be appropriate for there to be a
7 divorce in this particular case. If your Honor reads the
8 supervised visitation report, your Honor will note that
9 Mr. Souratgar represents he is living in Malaysia, that he is
10 becoming a citizen of Malaysia, he is residing in Malaysia.

11 At any time Mr. Souratgar can bring a custody action
12 in Malaysia, and that custody action will be in the Shairiah
13 court in Malaysia, and Mr. Souratgar has already told the court
14 in Malaysia our client is a practicing Christian who is taking
15 the child to church. Ms. Hassan made it clear what the
16 consequences of that will be of a Shairiah court in Malaysia
17 and that it is very clear that Mr. Souratgar has secured an
18 Iranian passport for our client and for the subject child. We
19 have seen a copy of that passport.

20 How easy would it be to take the child to Iran where
21 he runs a business? How easy it would be to let his brother in
22 Singapore run the Singapore end of the business? He made
23 representations repeatedly to both Ms. Lee and her sister that
24 he wants to take the child to Iran, the child will have a
25 better life in Iran, he is intent on taking the child to Iran.

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1 Your Honor, if the child goes to Iran, the child no longer has
2 a mother. What a grave risk of harm to that child!

3 Your Honor, we submit that Article XX also applies in
4 this particular case, that Singapore has grievously failed to
5 protect the human rights of this mother and child whose
6 interests are interconnected and inseparable. She sought
7 police action and police protection and protection from the
8 criminal justice system over and over again in Singapore but
9 was denied it.

10 She went to Family Court to get an order of protection
11 and did not succeed in doing that not because there wasn't a
12 very well documented history of domestic violence, and
13 ultimately in Singapore she finds herself in the Shairiah
14 court, the only place that she could obtain a divorce because
15 she is Muslim.

16 As Ms. Hassan made very clear, that court where the
17 substantive law comes from the Koran fails to protect the due
18 process rights, the rights to equal protection and the human
19 rights of women in that court system.

20 So, your Honor, we would submit that we have met our
21 burden of establishing by clear and convincing evidence that if
22 the subject child is repatriated to Singapore, there is a grave
23 risk of harm to that child and that Singapore has failed to
24 provide protection, fundamental fairness and protection of the
25 human rights of both the mother and the child.

CCEJSOU1

1 Thank you.

2 THE COURT: Thank you, Ms. Leidholdt.

3 Anything further from anyone? I will take up the
4 visitation issue in a moment. Anything further on the merits
5 of the hearing?

6 MS. BAUM: May I be heard?

7 I do urge the court to deny the petition. No matter
8 what position the court takes ultimately, the child is going to
9 be deprived of one of his parents.

10 I think the evidence showed that the petitioner
11 engaged in a remarkably sophisticated plan to defraud the
12 governments of Singapore, Malaysia and Iran into coercing a
13 change of citizenship for the child and his mother, and I think
14 that if the child is returned, the evidence shows that the
15 child will be separated from his mother.

16 For the reasons already stated by the respondent, that
17 would definitely present a grave risk to the child, and I think
18 the party responsible for the separation of the child from
19 either parent is the petitioner, by engaging in a scheme to
20 defraud the child of his citizenship. For that reason, I urge
21 the court to deny the petition.

22 THE COURT: Thank you. Anything further from the
23 petitioner?

24 MR. ARENSTEIN: One second.

25 (Off-the-record discussion)

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1 MR. ARENSTEIN: Your Honor, first of all, I would
2 object to the guardian making a conclusion of grave risk of
3 danger, which I did earlier.

4 Secondly, if all the things were true, even if they
5 were true, I don't think that this has gone to the level of
6 clear and convincing evidence.

7 In addition, Mr. Souratgar, who has been through this
8 whole trial here, he has not gone to Iran, not done anything to
9 violate a court order. We have had a violation of court orders
10 by Ms. Lee Jen Fair, who apparently decides she can take the
11 law into her own hands, the laws of Singapore which is a
12 signatory to this. I assume, I haven't seen, but I did see a
13 letter the U.S. Attorney or the State Department was going to
14 weigh in on that on this date, December the 14th at least.
15 That was the letter or copy I got.

16 This is not a custody case. What I just heard from
17 the guardian is custody. Under the Hague Convention, under
18 Article XVI, there isn't supposed to be any custody. Article
19 XIX, you are not supposed to rule on the merits of custody.
20 What the guardian has done has basically ruled on custody, and
21 the fact is I think that is not proper under the Hague
22 Convention.

23 This is not a custody case. This is where the child
24 lived all his life in Singapore. He has never lived in the
25 United States until Ms. Lee Jen Fair, against the law, against

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1 an order of the court, took the child to different places,
2 violated four different orders, four times she has violated the
3 orders, and now we come here and the guardian says very grave
4 risk of danger.

5 Well, I am concerned about Mrs. Lee Jen Fair's taking
6 of the child and what she has done with this child, four times
7 abducting the child from one place to another where my client
8 has to expend resources to be able to find that child and hide
9 the child out.

10 I don't believe there is any grave risk of danger. I
11 think the Article XIII (b) and Article XX should be denied. By
12 that expedition, you will be rewarding the respondent for her
13 blatant conduct in disregard of the law your Honor.

14 Thank you.

15 THE COURT: Thank you all very much. The hearing is
16 concluded. I'll get an order up on the visitation issue on ECF
17 momentarily.

18 MR. ARENSTEIN: May I address the visitation issue.

19 We have had four abductions that were testified to in
20 this Court, even admitted to by Ms. Lee Jen Fair. We have had
21 to have security to watch the respondent so that she doesn't
22 remove the child. The grandmother who is the person who
23 basically engineered the removal of the child from one place to
24 another is still here with the mother.

25 We have no objection to the mother visiting with the

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1 child, but I had asked the guardian to take some responsibility
2 when the mother was seeing the child. The guardian refused to
3 take any responsibility whatsoever to safeguard that the child
4 would not be abducted.

5 My client has gone nowhere with the child but here and
6 he has had the child here pursuant to your Honor's order. We
7 have had four abductions by Mrs. Lee Jen Fair. We have had no
8 guarantee, no way to prevent her from re-abducting the child to
9 someplace else.

10 If she is able to re-abduct this child outside of the
11 jurisdiction of this Court, under the case of Chavin v. Chavin
12 just argued in the U.S. Supreme Court, we might have a moot
13 case here before your Honor. So I would suggest or
14 respectfully ask the court that if you are going to have
15 visitation, that there be somebody responsible that that child
16 not be re-abducted to someplace else or not be removed in some
17 way so that we at least know. We have spent a fortune, my
18 client has no more money now to spend for security to make sure
19 that Mrs. Lee Jen Fair doesn't further abduct this child.

20 The guardian has not cooperated with me. I asked her
21 to help us devise a way so that it would be secure. She says
22 your client can pay for it, your client can take care of this,
23 your client can take care of that.

24 Well, my client doesn't have all the money to do that.
25 I think if there is going to be something with security, maybe

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1 Mrs. Lee Jen Fair should chip in or should be paying some of
2 the costs. We're in this Court to date because Mrs. Lee Jen
3 Fair abducted the child to the United States. It is uncanny
4 that the abductor should have unrestricted powers to take the
5 child anywhere she wants or not be restricted to have the child
6 here without any safeguards at all.

7 So I ask your Honor if you issue or create an order of
8 visitation, there be some safeguards that the child is not
9 taken out of the jurisdiction of the court.

10 Thank you, your Honor.

11 THE COURT: All right. Anyone else wish to be heard?

12 MR. McNALLY: Yes, your Honor, very briefly.

13 Obviously, I think that with regards to the temporary
14 arrangement that has been set in place for the care of the
15 child, it is not something that is ideal for our client.

16 That being said, the threat of flight I think exists.
17 Mr. Arenstein points to our client as bringing up is also very
18 apparent on the other side. We have heard a lot of testimony
19 in this case about the potential for Mr. Souratgar to take the
20 child to Iran. That was his intention, and that still exists.

21 We have not attempted to impose by circumstance any
22 sort of restrictions on your Honor's order, and we respectfully
23 request that the visitation rights that are set forth in your
24 order are adhered to or if not expanded upon so that our client
25 can enjoy time with her child.

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1 THE COURT: All right. Thank you very much.

2 We are adjourned, and let me just say in conclusion,
3 it is apparent to me there are a lot of areas where the parties
4 are in sharp disagreement, but the court will observe that it
5 is my belief that both parents, separately and individually,
6 love Shayan. I take that from the evidence and I take that
7 from their actions. It is, indeed, sad that the adults have
8 created a situation where this winds up in the hands of a judge
9 adjudicating a petition under a treaty between the United
10 States and Singapore.

11 I also wish to express my gratitude to all, including
12 court staff, court reporters, guardian ad litem, counsel team
13 for petitioner and counsel team for the respondent, including
14 associate counsel, legal assistants, attorneys not yet admitted
15 to the Bar, and others who have helped in proceeding with this
16 case and proceeding, as it needs to be, on an expedited basis.

17 I cannot help that from time to time I express a view
18 on what I see, and I have done so, but that doesn't take away
19 from the fact that I realize that behind the presentations has
20 been a lot of hard work by a lot of people, in some instances
21 by attorneys who are not being compensated for their work, as
22 is the case with Professor Baum and Mr. McNally and perhaps
23 with others, and I thank all of you for your attention to this
24 matter.

25 I wish you the best for the holidays and I hope for

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1 the wisdom to decide this case correctly, and it will be my
2 endeavor to try and decide this case with the utmost dispatch.

3 Thank you.

4 MR. ARENSTEIN: Thank you.

5 MR. McNALLY: Thank your Honor.

6 (Court adjourned)

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